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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1934

NO. [redacted] 16

A. S. ALEXANDER, H. D. RUMMEL, and GEORGE S. BATON, as Receivers of Tower Hill Connellsville Coke Company of West Virginia, a Corporation, Petitioners,

v.

J. H. HILLMAN, JR., A. B. SHEETS, THOMAS WATSON, HILLMAN COAL AND COKE COMPANY, a Corporation, and HECLA COAL AND COKE COMPANY, a Corporation, Respondents.

## BRIEF OF RESPONDENTS.

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v.

J. H. HILLMAN, JR., A. B. SHEETS, THOMAS WATSON, HILLMAN COAL AND COKE COMPANY, a Corporation, and HECLA COAL AND COKE COMPANY, a Corporation, Respondents.

## BRIEF OF RESPONDENTS.

In this cause the petition is for the issuance of a writ of certiorari directed to the Circuit Court of Appeals of the Fourth Circuit for a review of its decree (R. p. 86) which decree modified, as set forth in the opinion of said Court (R. p. 74), the decree of the District Court for the Southern District of West Virginia at No. 3370 in Equity of said Court (R. p. 26) and remanded the said cause to the said Court for further proceedings in accordance with the opinion of the Circuit Court of Appeals. The decree of the District Court (R. p. 26) so modified, dismissed the Bill of Complaint therein filed for want of jurisdiction over the persons of the Respondents.

The Circuit Court of Appeals in its opinion says:

"We think, therefore, that, instead of dismissing the ancillary bill, the court below should have

retained it, treating it as a petition to stay action on the claims until the counterclaims therein asserted could be adjudicated in a court of competent jurisdiction, and as setting up defenses to the claims in the cases where the matters alleged could be considered as purely matters of defense as distinguished from counterclaims. The order appealed from will accordingly be modified and the cause will be remanded to the end that the court below may give consideration to the question of staying action on the claims pending the adjudication of the counterclaims in a court of competent jurisdiction, and that it may consider any matter set up in the bill which may appropriately be considered as matter of defense against the claims filed. The court should require, however, that new pleadings be filed in lieu of the ancillary bill, setting up as against each claim filed with the receivers any purely defensive matter which the receivers may desire to assert, together with any matter which would justify the court in staying action on the claims pending the adjudication of any counterclaim or counterclaims in a court of competent jurisdiction." (R. p. 83)

As the Circuit Court of Appeals in its opinion holds, the question presented in this cause is the same as that in the cause at No. 3736 of said Court, which was an appeal from an order entered in the Original cause at No. 1434 in Equity of the District Court, wherein Piedmont Coal Company, et al. are plaintiffs and Tower Hill Connellsville Coke Company of West Virginia is defendant, and the decree entered by the Circuit Court of Appeals in this cause is the same as its decree in the cause at No. 3736, to review which a petition for a certiorari has been filed at No. 831 October Term, 1934 of this Court.

As Petitioners have requested that their Petition and Supporting Brief, filed at No. 831, October Term, 1934, be considered and taken as a part of their Petition filed at this Number, Respondents for the convenience of this Court have adopted the same procedure and respectfully request the Court to receive and treat their Brief filed at No. 831 October Term, 1934 as their Brief filed in this cause.

Respondents submit that in said Brief they have refuted Petitioners' statement (Petition p. 2) that the so-called Ancillary Bill set up equitable counterclaims against Respondents.

Although both appeals to the Circuit Court of Appeals presented the same question, viz., the jurisdiction of the District Court over the persons of the Respondents to grant the affirmative relief prayed for in the Ancillary Bill, the two causes are, as the Circuit Court of Appeals has held, in no sense one and the same. The Ancillary Bill seeks to recover large sums of money from Respondents on alleged causes of action *ex delicto* and is in reality an Original Bill against the Respondents who are not parties to the Primary Cause, and the issues in the two causes are entirely different. Hence the said Bill required service of original process. Section 51 of the Judicial Code (U. S. C. A., Title 28, Sec. 112) prohibits the bringing of such a suit in the Southern District of West Virginia against the Respondents, all of whom are citizens, residents and inhabitants of the Commonwealth of Pennsylvania (R. p. 26).

WHEREFORE, it is respectfully submitted that the writ of certiorari in this case should be denied.

EDWARD W. KNIGHT,
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ALEXANDER J. BARRON,
*Counsel for Respondents.*